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July 8, 2024

David J. Smith
Clerk of Court
U.S. Court of Appeals for the Eleventh Circuit
Elbert P. Tuttle Courthouse
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

RE: *Spirit Airlines, Inc. v. United States Department of Transportation*,
No. 24-12121 (11th Cir.): Notice of petition challenging the same
rule filed earlier before the Fifth Circuit in *Airlines for America et*
al. v. Department of Transportation, No. 24-60231 (5th Cir.), and
thus requiring transfer of this case to the Fifth Circuit under 28
U.S.C. § 2112(a)(5)

Dear Mr. Smith:

We represent the Petitioners (the Airlines) before the Fifth Circuit in *Airlines for America et al. v. Department of Transportation*, No. 24-60231 (5th Cir.). In that litigation, the Airlines challenge the same rule that Spirit Airlines, Inc., challenges here, *Enhancing Transparency of Airline Ancillary Service Fees*, 89 Fed. Reg. 34,620 (Apr. 30, 2024) (Rule). The Airlines thus write to notify this Court that by statute it “shall transfer” this case (*Spirit Airlines, Inc. v. United States Department of Transportation*, No. 24-12121) to the Fifth Circuit. 28 U.S.C. § 2112(a)(5).

When only one petition for review of an agency rule is filed within the first ten days after issuance of the rule, the agency “shall file the record in that court.” *Id.* § 2112(a)(1). If no petition is filed within the ten-day window,

the agency “shall file the record in the court in which proceedings with respect to the order were first instituted.” *Id.* Then, “[a]ll courts in which proceedings are instituted with respect to the same order, other than the court in which the record is filed ... , shall transfer those proceedings to the court in which the record is so filed.” *Id.* § 2112(a)(5). In other words, any later-filed petitions must be transferred to the court of appeals in which the first petition was filed.

Here, the Airlines first petitioned for review of the Rule on May 10, 2024 (docketed May 14, 2024), and then filed another petition adding additional petitioners on June 12 (docketed June 13, 2024). The Airlines have since sought a stay of the Rule because it exceeds the Department of Transportation’s authority and is unlawful under the Administrative Procedure Act; the stay motion has been fully briefed by both sides since July 1, 2024. The May 10 petition was the first and only petition filed within the first ten days of issuance of the Rule on April 30, 2024. Accordingly, the Department of Transportation must file the record in the Fifth Circuit (the record is currently due July 23, 2024), *id.* § 2112(a)(1), and this Court “shall transfer” Spirit Airlines’ petition to the Fifth Circuit, *id.* § 2112(a)(5).

The Airlines will file a copy of this letter as an exhibit to a corresponding letter to be filed before the Fifth Circuit.

Dated: July 8, 2024

Respectfully submitted,

/s/ Shay Dvoretzky

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CERTIFICATE OF SERVICE

I hereby certify that on July 8, 2024, I caused copies of this document to be served on the Clerk of Court for the United States Court of Appeals for the Eleventh Circuit, as well as counsel for Spirit Airlines, Inc., and the U.S. Department of Transportation by email and FedEx.

Dated: July 8, 2024

/s/ Shay Dvoretzky

Shay Dvoretzky